

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte WILLIAM M. SHAHID

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Appeal No. 98-2261  
Application 08/314,829<sup>1</sup>

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ON BRIEF

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Before CALVERT, McQUADE, and BAHR, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 18, all the claims in the application.

The claims on appeal are drawn to a reclining chair, and are reproduced as Exhibit 1 of appellant's brief<sup>2</sup>.

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<sup>1</sup> Application for patent filed September 29, 1994.

<sup>2</sup> In reviewing the claims we note (i) "said canopy means" in claims 5, 6 and 16 has no antecedent basis; (ii) "removably" in claims 7 and 17 apparently should be --removable--; (iii) claims 14 and 15 are duplicates of claims 3 and 4, respectively. See MPEP § 706.03(k).

Appeal No. 98-2261  
Application 08/314,829

The prior art applied by the examiner is:

Craig	5,013,085	May 7, 1991
Baron	5,326,152	Jul. 5, 1994
DeMars	5,350,215	Sep. 27, 1994
Sinohuiz	5,356,107	Oct. 18, 1994

(filed Jul. 19, 1993)

The admitted prior art in appellant's Declaration Under Rule 132 filed on August 15, 1996 (APA).

The appealed claims stand rejected under 35 U.S.C. § 103 on the following grounds:

- (1) Claims 1 to 5, 14 and 15, unpatentable over DeMars in view of Craig and Baron;
- (2) Claims 7 to 13, 17 and 18, unpatentable over DeMars in view of Craig, Baron and Sinohuiz;
- (3) Claims 6 and 16, unpatentable over DeMars in view of Craig, Baron and APA.<sup>3</sup>

#### Rejection (1)

Appellant argues as to this rejection that the subject matter recited in claim 1 is patentable over DeMars in view of Craig and Baron because:

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<sup>3</sup> This was a new ground of rejection made in the examiner's answer.

(a) there is no teaching or suggestion in DeMars of a towel rack as recited in part (g) of claims 1 and 14; (b) Craig does not teach or suggest a canopy formed of a member having ends which are pivotally connected to the frame through a connector; and (c) it would not have been obvious from Baron to secure a storage compartment to the foldable frame of the DeMars chair.

As for argument (a), the examiner takes the position that the upper arm of DeMars's frame 20 (to which bracket 64 is attached) constitutes the towel rack as claimed. We agree. While DeMars does not disclose or suggest that a towel may be hung on the upper end of the frame, it is clearly capable of being so used, and "[i]t is well settled that the recitation of an intended new use for an old product does not make a claim to that old product patentable". In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). Appellant's argument that the reference is destroyed by modifying the reference is not well taken, since no modification of DeMars is proposed. Also, the upper portion of DeMars's frame, on which the recited towel rack is

readable, is coupled to the remainder of the frame, and thus meets the language of part (g) of claims 1 and 14.

Appellant's argument (b) is not understood, since the ends of Craig's canopy member 15 are clearly pivotally secured to frame 13 by the connectors shown in Figs. 3 and 4 (col. 2, lines 23 to 31). Contrary to appellant's argument, claims 1 and 14 do

not require that the canopy be connected to the top of the frame.

Although we are not persuaded by appellant's arguments (a) and (b), we agree with argument (c). The examiner relies on Baron as teaching securement of storage compartments 30, 35 on the frame of a foldable chair. However, Baron's storage compartments are attached to a cover which is placed over the chair, rather than to the frame of the chair itself. We do not consider that in light of Baron's disclosure one of ordinary skill would have found it obvious to attach a storage compartment to the frame of the DeMars chair in addition to the compartments 76, 78 secured to the armrests. Although Baron's compartments may be said to be secured to the frame of

Appeal No. 98-2261  
Application 08/314,829

the chair by means of the cover, it is not evident how a cover as disclosed by Baron would be used with the chair of DeMars, for the reasons stated by appellant on page 9 of the brief.

Accordingly, rejection (1) will not be sustained.

Rejections (2) and (3)

The additional prior art applied in these rejections, namely, Sinohuiz and APA, does not supply the deficiency noted above with regard to rejection (1), and therefore rejections (2) and (3) will not be sustained.

## Conclusion

The examiner's decision to reject claims 1 to 18 is reversed.

REVERSED

IAN A. CALVERT )  
Administrative Patent Judge )  
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Appeal No. 98-2261  
Application 08/314,829

JOHN P. McQUADE  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

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